REMARKS

[0003]   Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-76 are presently pending. Claims amended herein are: 1, 11, 25, 42, 50, and 59. Claims withdrawn or cancelled herein are: 7-10, 17-18, 22-24, 30-41, 48-49, 56-58, 60, and 64-76. New claims added herein are: none.

Formal Request for an Interview

[0004]   If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can talk about this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0005]   Please contact me or my assistant to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for us, I welcome your call to either of us as well. Our contact information may be found on the last page of this response.

Claim Amendments

[0006]   Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 1, 11, 25, 42, 50, and 59 herein.

Substantive Matters

Claim Rejections under §112 1ST ¶

[0007]   Claims 1-10, 18, 22-34, 36, 42-58, 64-68, and 74-76 are rejected under 35 U.S.C. §112, 2nd ¶. In light of the amendments presented herein, Applicant submits that these rejections are moot. Accordingly, Applicant asks the Examiner to withdraw these rejections.

[0008]   Claims 8-10, 18, 22-24, 30-36, 48-49, 56-58, 60, 64-68 and 74-76 are canceled herein. The cancelation of these claims renders the §112, 2nd ¶, rejection moot. Applicant respectfully requests that the Examiner withdraw the rejections of these claims.

[0009]   Independent claims 1, 25, 42, and 50 have been rejected for including the element of "re-booting the target computer in the pre-installation environment". Examiner has expressed the concern that this element cannot be properly illustrated. (See Action p. 5). Applicant has amended these independent claims to now state in pertinent part "re-booting the target machine [in], wherein rebooting the target computer activates the deployment environment on the target computer". The claims have been amended to clarify that it is the target computer that is rebooted and in doing so, the pre-installation environment is activated. Applicant respectfully requests the Examiner to withdraw the rejections of these claims as amended as the claims have been clarified to remove any confusion.

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Claim Rejections under §§ 102 and/or 103

[0010]   The Examiner has rejected claims 1-24, and 69-76 under 35 U.S.C. §102(b) as being anticipated by Sun Microsystems (Hereafter Sun): "JumpStart™ Mechanics: Using JumpStart Application for Hands-Free Installation of Unbundled Software", (hereinafter "Part 1"); "JumpStart™ Mechanics: Using JumpStart Application for Hands-Free Installation of Unbundled Software", (hereinafter "Part 2"); and Upgrading to the Solaris™ 8 Operating Environment (hereinafter "Part 3"). For the reasons set forth below, the cited references fail to anticipate the claims as amended.

[0011]   In addition, the Examiner has rejected claims 25-68 under 35 U.S.C. §103(a) over Pawlak, "Software Update Service to Ease Patch Distribution", DirectiononMicrosoft.com in view of JumpStart Parts 1, 2, and 3. For the reasons set forth below, cited references fail to show a prima facie case showing that the rejected claims are obvious.

[0012]   Accordingly, Applicant respectfully requests that the §102 and §103 rejections be withdrawn and the case be passed along to issuance.

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Anticipation Rejections

[0013]   Applicant submits that the anticipation rejections are not valid because, for each rejected claim, no single reference discloses each and every element of that rejected claim.[1] Furthermore, the elements disclosed in the single reference are not arranged in the manner recited by each rejected claim.[2]

Based upon Sun

[0014]   The Examiner rejects claims 1-24 and 69-76 under 35 U.S.C. § 102(b) as being anticipated by JumpStart Parts 1, 2 and 3. Applicant respectfully traverses the rejections of these claims. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejection of these claims.

Independent Claim 1

[0015]   Independent claim 1 has been amended to recite in pertinent part a method comprising:

> installing a pre-installation environment on a target computer that is desired to be imaged with a new operating system, the pre-installation environment comprising a subset of an operating system, wherein the act of installing the pre-installation environment

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[1] "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); also see MPEP §2131.

[2] See In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

comprises installing the pre-installation environment in a same disk partition as an old operating system;

re-booting the target computer [in], wherein rebooting the target computer activates the pre-installation environment on the target computer;

deleting [an] the old operating system from within the pre-installation environment;

installing the new operating system from within the pre-installation environment, wherein the new operating system is deployed in the same disk partition as the old operating system, whereby non-operating system data on the disk is preserved;

[0016]   Independent claim 1 has been amended to clarify that the pre-installation environment comprises a subset of an operating system. Claim 1 is further clarified to state comprises installing the pre-installation environment in a same disk partition as the old operating system. Additionally, claim 1 is further amended to clarify that the new operating system is deployed in the same disk partition as the old operating system, whereby non-operating system data on the disk is preserved.

[0017]   The Examiner indicates (Action, p. 9) the following with regard to claim 2 (claim 2 being rolled up into independent claim 1):

2. the method of claim 1, wherein the act of installing the pre-installation environment comprises installing the pre-installation environment in a same disk partition as the old operating system (in part 1, see, installation profile; in part 2, p. 9, p. 11, see disk repartitioning).

[0018]   Applicant submits that JumpStart ™ parts 1, 2, and 3 does not anticipate this claim because they do not show or disclose the elements as recited in independent claim 1. The cited references fail to teach installing the pre-installation environment in a same disk partition as the old operating system.

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The cited portion of JumpStart ™ parts 1, 2 and 3 simply state that use of the SEVM software re-partitions the disks. There is no reference to the location of any pre-installation environment.

[0019]   Further, claim 1 has been amended to clarify that the new operating system is deployed in the same disk partition as the old operating system, whereby non-operating system data on the disk is preserved. JumpStart ™ Part 2, page 9 states "Initialization of disks by SEVM re-partitions the disks, irrevocably erasing all pre-existing data on the disks." JumpStart™ teaches the antithesis of deploying the new operating system in the same disk partition.

[0020]   Support for the amendments to independent claim 1 can be found at least at page 14, line 22 through page 15, line 8 of the present application. This section of the present application further details the benefits of deploying the new operating system within the same partition as the old operating system. Specifically, some machines may not have separated physical partitions. In these contexts, the claimed image deployment method can flexibly accommodate such machines. Further, another advantage is that non-operating system data on the disk can be preserved.

[0021]   The cited art, namely, JumpStart™ parts 1, 2, and 3, fail to teach each element of independent claim 1. Consequently, JumpStart™ parts 1, 2, and 3 do not disclose all of the claimed elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

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Dependent Claims 2-7

[0022]   These claims ultimately depend upon independent claim 1.   As discussed above, claim 1 is allowable.   It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.   Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 11

[0023]   Independent claim 11 has been amended to recite in pertinent part a method for remotely imaging multiple target computers with a new operating system comprising:

> a preparation phase in which various data is captured for migration to the new operating system, wherein the preparation phase comprises installing a pre-installation environment from which in place installation can take place, the pre-installation environment comprising a subset of an operating system, wherein the act of installing the pre-installation environment comprises installing the pre-installation environment in a same disk partition as the old operating system;
> a wipe and load phase in which an old operating system is deleted and the new operating system is installed in place, wherein the new operating system is deployed in the same disk partition as the old operating system, whereby non-operating system data on the disk is preserved;

[0024]   Again, as discussed with relationship to independent claim 1, JumpStart™ parts 1, 2, and 3 do no anticipate each element of claim 11. The relied upon reference fails to teach the act of installing the pre-installation

environment comprises installing the pre-installation environment in a same disk partition as the old operating system. The cited references also fail to teach deploying the new operating in the same disk partition as the old operating system, whereby non-operating system data on the disk is preserved. In fact, the cited references teach the antithesis. As such, JumpStart™ parts 1, 2, and 3 cannot anticipate independent claim 11. Applicant respectfully requests that the Examiner withdraw the rejections of claim 11.

Dependent Claims 12-16, 19-21

[0025]   These claims ultimately depend upon independent claim 11. As discussed above, claim 11 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Obviousness Rejections

Lack of *Prima Facie* Case of Obviousness (MPEP § 2142)

[0026]   Applicant disagrees with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a prima facie case have not been met.

Independent Claim 25

[0027]   Independent claim 25 has been amended to recite in pertinent part
a method for in-place imaging of a target computer with a new operating system
comprising:

> installing a pre-installation environment on the
> target computer that is desired to be imaged with a
> new operating system, the pre-installation environment
> comprising a subset of an operating system, wherein
> the act of installing the pre-installation environment
> comprises installing the pre-installation environment in
> a same disk partition as an old operating system;
> re-booting the target computer [in], wherein
> rebooting the target computer activates the pre-
> installation environment on the target computer;
> deleting an old operating system from within the
> pre-installation environment;

> installing the new operating system from within
> the pre-installation environment, wherein the new
> operating system is deployed in the same disk partition
> as the old operating system, whereby non-operating
> system data on the disk is preserved;

[0028]   As discussed with reference to independent claim 1, JumpStart™
parts 1, 2, and 3 does not teach or suggest to one of ordinary skill in the art
installing the pre-installation environment in the same disk partition as the old
operating system. Further, JumpStart™ parts 1, 2, and 3 are silent to deploying
the new operating system in the same disk partition as the old operating system,
whereby non-operating system data on the disk is preserved. Pawlak does not
solve the deficiency of the JumpStart™ references.

[0029]   Further, JumpStart™ Part 2, page 9 teaches the complete opposite
of retaining the non-operating system data. In fact, the cited portion of

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JumpStart teaches away from the retention of data. JumpStart™ teaches that the disks are re-partitioned, thus deleting all data on the disks.

[0030]   As shown above, the combination of JumpStart™ parts 1, 2, and 3 in combination with Pawlak does not disclose all of the claimed elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 26-29

[0031]   These claims ultimately depend upon independent claim 25. As discussed above, claim 25 is allowable.   It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.   Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 42

[0032]   Independent claim 25 has been amended to recite in pertinent part a method comprising:

> installing a pre-installation environment on a target computer that is desired to be imaged with the new image, the pre-installation environment comprising a subset of an operating system, wherein the act of installing the pre-installation environment comprises installing the pre-installation environment in a same disk partition as an old operating system;
> re-booting the target computer [in], wherein rebooting the target computer activates the pre-installation environment on the target computer;
> deleting an image the old operating system from within the pre-installation environment;

installing the new operating system from within the pre-installation environment wherein the new operating system is deployed in the same disk partition as the old operating system, whereby non-operating system data on the disk is preserved;

[0033]   As discussed with reference to independent claim 25, the cited combination of art fails to teach or suggest to one of ordinary skill in the art each element of independent claim 42.   Applicant respectfully requests that the examiner withdraw the rejection of claim 42.

Dependent Claims 43-47

[0034]   These claims ultimately depend upon independent claim 42.   As discussed above, claim 42 is allowable.   It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.   Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 50

[0035]   Independent claim 50 has been amended to recite in pertinent part a method comprising:

installing the deployment environment on a target machine that is desired to be imaged with the new operating system, the deployment environment comprising a subset of an operating system, wherein the act of installing the deployment environment comprises installing the deployment environment in a same disk partition as an old operating system;

re-booting the target machine [in], wherein rebooting the target computer activates the deployment environment on the target computer;

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deleting an old operating system from within the deployment environment;

installing the new operating system from within the deployment environment, wherein the new operating system is deployed in the same disk partition as the old operating system, whereby non-operating system data on the disk is preserved;

[0036] As discussed with reference to independent claim 25, the cited combination of art fails to teach or suggest to one of ordinary skill in the art each element of independent claim 50. Applicant respectfully requests that the examiner withdraw the rejection of claim 50.

Dependent Claims 51-55

[0037] These claims ultimately depend upon independent claim 50. As discussed above, claim 50 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 59

[0038] Independent claim 59 has been amended to recite in pertinent part a method comprising:

a preparation phase in which various data is captured for migration to the new operating system, wherein the preparation phase comprises installing the deployment environment from which in place installation can take place, the deployment environment comprising a subset of an operating system, wherein the act of installing the deployment environment

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comprises installing the deployment environment in a same disk partition as the old operating system;

a wipe and load phase in which an old operating system is deleted and the new operating system is installed in place, wherein the new operating system is deployed in the same disk partition as the old operating system, whereby non-operating system data on the disk is preserved;

[0039]   As discussed with reference to independent claim 25, the cited combination of art fails to teach or suggest to one of ordinary skill in the art each element of independent claim 59.   Applicant respectfully requests that the examiner withdraw the rejection of claim 59.

Dependent Claims 61-63

[0040]   These claims ultimately depend upon independent claim 59.   As discussed above, claim 59 is allowable.   It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.   Additionally, some or all of these claims may also be allowable for additional independent reasons.

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Conclusion

[0041]   All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action**. Please call/email me or my assistant at your convenience.

Respectfully Submitted,

Dated: _2008.09.21_   By: _____

Jason F. Lindh
Reg. No. 59090
(509) 324-9256 x215
jason@leehayes.com
www.leehayes.com

My Assistant: Carly Bokarica
(509) 324-9256 x264
carly@leehayes.com

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